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June 8, 1984

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Re: Operating License Application, antitrust review, Gulf States Utilities Company (River Bend Units 1 & 2), Docket Nos. 50-458A and 50-459A

Dear Gentlemen:

In light of Lafayette's recent meeting with you and other representatives of the NRC staff, it was suggested that Lafayette further summarize 1/ evidence that GSU is refusing to transmit for Lafayette, even and especially where GSU would appear to be offering transmission through the Louisiana Energy and Power Authority (LEPA).

1/ See Lafayette's prior transmittals of September 15, 1983; February 3, 1984; March 26, 1984. The present letter does not reiterate all matters previously stated, but, as requested, focuses on GSU's continued refusal to provide transmission for non-generators and its violation of its construction permit obligation to transmit between Lafayette and Plaquemine under GSU's interconnection agreement with these entities.

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In the past year GSU has denied transmission between Lafayette and two non-generati' ,ystems (Abbeville and St. Martinville) in order to retai.. hese systems as customers, and has refused to provide transmission between Lafayette and Plaquemine under interconnection agreements entered into in connection with the construction permit here. As this letter details,

(a) notwithstanding any promised future transmission, to date GSU has yet to provide transmission for sales by Lafayette to non-generating municipal systems on GSU's system,

(b) GSU's behavior makes clear that its promised LEPA transmission is a will-o'-the-wisp -- i.e., it has erected and will continue to erect, barriers needed to delay transmission and retain customers,

(c) even where transmission through LEPA might be available, it is not a satisfactory transmission alternative as a matter of law and fact, and

(d) GSU's refusal to transmit between Lafayette and Plaquemine under its interconnection agreements with these systems is a violation of the construction permit here.

The basic factual pattern is simple. Lafayette has been seeking to market over 200 Mw of generation surplus. To do so it must obtain transmission from GSU. Despite the fact that Lafayette has been offering its power at lower rates than GSU, it has been unable to obtain necessary transmission of its power by GSU. As a result, Lafayette ratepayers have had, and are continuing to have, to pay higher rates for the capacity costs on Lafayette's excess capacity and the revenue lost as a result of GSU's failure to transmit for Lafayette. By the same token, ratepayers of municipalities which would take power from Lafayette but which were frustrated by GSU's failure to transmit are paying higher GSU rates.

It is Lafayette's position that:

1. GSU's failure to transmit violates the conditions of its construction permit. This violation is particularly blatant in respect to GSU's failure to transmit from Lafayette to Plaquemine under either of GSU's longstanding interconnection agreements with these systems.

2. The refusals are contrary to the Sherman Act and create a situation inconsistent with the antitrust laws. These recent actions are "significant changes" which, pursuant to the Atomic

Energy Act and the Commission's rules thereunder, require operating license stage antitrust review and, to the extent necessary, the imposition of license conditions (i.e., conditions above and beyond those presently contained in the construction permit).

3. To the extent that GSU would offer service through LEPA, the service offered is far more restrictive and inferior to that which GSU committed to in connection with the construction permit here.

LEPA and LEPA's interconnection agreement with GSU, came into being after the initial antitrust review here. GSU's evasion of its construction permit commitments by requiring Lafayette to employ LEPA its behavior constitutes a "significant change" requiring remedy.

I. GSU Has Refused To Transmit Between Lafayette And Non-Generating Municipal Systems In Order To Maintain Them As Customers.

In the 1980's, Lafayette has sought to market its excess power to other municipal systems, including non-generating systems that are GSU customers. Its negotiations with these systems have resulted in contracts that would undeniably have resulted in substantial savings over purchases from GSU. In each case, however,

a. GSU initially promised to provide transmission for the sale by Lafayette.

b. At the last moment, i.e., as the Lafayette sale was to begin and the GSU contract to expire, GSU pulled the rug out from its promise and imposed a new series of requirements.

c. At the same time that it was frustrating Lafayette's efforts, GSU offered the buyer a reduced rate and a bonus refund if it renewed its contract with GSU immediately.

In sum, GSU has, to this date, failed to provide transmission between GSU and non-generating systems. Where it has promised to do so, it has strung matters along, interposed new conditions at the last moment, and by simultaneously offering a bonus for contract renewal, has placed systems in impossible situations where they had no practical alternative but to renew their contract with GSU.

A. Abbeville

The story of GSU's dealings with Abbeville and Lafayette is told in detail in affidavits of Abbeville's Mayor Larry J. Campisi and its engineering consultant Harold Beard as well as the other documents which were attached to Lafayette's February 3, 1984 transmittal, at the attachment numbers referenced here.

Abbeville is a non-generating system that has been a GSU customer. In early 1983, Abbeville set out to determine whether it should renew its contract with GSU or seek alternative power supply from others. As a result of initial inquiry to GSU, Abbeville was informed that, if it did not wish to continue as a GSU customer, GSU would provide it with transmission so that it could be supplied by others. As soon as Abbeville availed itself of this commitment by entering into agreement with Lafayette, GSU renegged on the commitment. GSU did so just as the GSU-Abbeville contract was expiring and the Abbeville-Lafayette contract service was scheduled to begin. In doing so, GSU told Abbeville that if Abbeville entered into a long term renewal of the GSU contract, Abbeville would be retroactively upgraded to a lower price service and receive a substantial bonus refund. This retroactive upgrade and bonus, however, would only be available if Abbeville agreed to an immediate renewal of its contract with GSU. Abbeville, faced with the prospect of costly and lengthy litigation to obtain transmission by GSU for Lafayette power on the one hand, and the opportunity of a bonus refund payment and rate reduction from GSU on the other, had little practical alternative but to renew its GSU contract. Abbeville did so, as the documents make clear, notwithstanding its belief that the proposed Lafayette contract would otherwise be the more economic alternative for Abbeville.

1. Abbeville Required Transmission from GSU and Was Assured it Would be Available

In January 1983, Abbeville inquired of GSU as to power supply alternatives available from GSU, including specifically, "transmission rights to achieve power from third parties as per LTS-GSU rate." 1/ (Attachment 5 to February 3, 1984 letter) In response, GSU stated that it would provide transmission should Abbeville decide to seek service elsewhere.

1/ The "LTS" rate is the transmission rate schedule contained in Gulf States' interconnection agreements with, among others, Lafayette.

On March 1, 1983, GSU's Manager of Business Development, Malcolm Williams, wrote to Harold Beard, Abbeville's engineering consultant, that if Abbeville did not wish to continue with wholesale purchases from GSU, GSU would provide transmission service.

> If Abbeville elects to purchase its electric energy requirements from a third party, GSU would agree to enter into a power interconnection agreement with Abbeville and would provide transmission service to the entities which have agreements with GSU. This agreement will provide, among other things, for transmission service under similar terms and conditions as agreements GSU has made with other entities (February 3 letter, Attachment 6).

This commitment was reaffirmed by Mr. Williams in a March 15, 1983 letter to Mr. Beard:

> ... GSU will offer to provide electric service to the City of Abbeville under one (1) of the following arrangements.
>
> ... (4) GSU will provide the City with a thirty (30) year interconnection agreement as outlined in our letter of March 1, 1983 ... (Attachment 7)

As an alternative to the interconnection and transmission service, GSU proposed to enter into a new ten-year wholesale service contract with Abbeville. Abbeville protested GSU's insistence on a minimum ten-year term. As Mr. Beard explains (Attachment 4 at 6):

> We were concerned because we wished Abbeville to have reasonable opportunity to plan for and choose economic supply sources as they become available .... In addition, we were concerned because we believed that Gulf States' rates were subject to significant increase and uncertainty related among other things, to the coming into service of the River Bend nuclear unit.

2. Abbeville Entered into Negotiations with Lafayette in Reliance on Transmission from GSU

When GSU stood fast on the ten-year term, Abbeville entered into discussion with Lafayette for the supply of its

requirements. As stated in the Beard and Campisi affidavits, in short order it became apparent to Abbeville that service from Lafayette would be more economical than service from GSU.

3. GSU Refused to Transmit for a Lafayette Sale to Abbeville

On April 28, 1983, therefore, Abbeville and Lafayette entered into a wholesale requirements contract with service to start on June 1, 1983 (Attachment 8). As Mr. Beard's affidavit explains, in entering into the agreement "Abbeville assumed that Gulf States would honor its repeated commitments of March 1 and March 15 to provide Abbeville an interconnection agreement and transmission through the Gulf States system." (Attachment 4 at 7)

As stated in the Beard and Campisi affidavits, on May 5, 1983 Abbeville met with GSU to secure confirmation of GSU's interconnection and transmission commitments. At that meeting, however, GSU stated that it did not want to wheel power for a Lafayette sale to Abbeville, and would not do so unless it were required by law. Gulf States' official James Richardson said that any commitment that had been made had been rescinded (Attachment 3 at 5).

Several days later, Mayor Campisi received a call and was told that Gulf States wished to meet with the Mayor alone; attorneys and consultants were not invited. A meeting took place on May 18.

The meeting is summarized in Mayor Campisi's affidavit (Attachment 3, at 6-7). As the affidavit explains, Gulf States told Abbeville that it did not have interconnection agreements with non-generating systems, and "there would be no way it could allow them." Gulf States stated that it could not adhere to the commitment contained in its March letters to Abbeville. Under the circumstances, Abbeville asked if Gulf States would provide a new wholesale contract that provided for cancellation on a year's notice, but Gulf States said it could not do so because it feared loss of Abbeville as a customer.

4. While Refusing to Transmit, GSU Offered Abbeville a Bonus for Immediate Contract Renewal

As the Campisi affidavit recounts, following the meeting, Gulf States offered to reduce the initial term of a new contract to 3½ years (from ten). In doing so, it stated that unless Abbeville accepted this offer immediately, it would not be entitled to retroactive application (to January 1, 1983) of the "WST" (wholesale service at transmission voltage) rate, which would provide Abbeville thousands of dollars of refunds.

5. Given GSU's Refusal to Transmit, Abbeville had no Practical Recourse to Contract Renewal with GSU

As Mayor Campisi's affidavit further details, given GSU's refusal to transmit and its insistence on immediate acceptance of its own offer, Abbeville had no recourse to acceptance of GSU's offer, even though the agreement with Lafayette was preferable (Attachment 3, at 8-9, emphasis added):

> Under the circumstances, it was apparent that Gulf States was committed to resisting the loss of Abbeville as a customer to Lafayette. Even while Gulf States had, in Abbeville's view, committed itself to provide the interconnection agreement and transmission needed for Abbeville to proceed with its agreement to Lafayette, it was clear that the commitment could not be made good without long drawn out litigation.
>
> In addition, as I wrote to the Mayor of Lafayette, if Abbeville had not agreed to Gulf States' final proposal, it would not have received service from Gulf States at the WST rate, and the further savings related to the retroactive application of this rate. Instead, as Abbeville pressed for fulfillment of Gulf States' commitments through litigation, the existing Gulf States contract would have automatically been renewed, and Abbeville would have had to pay the higher WSD rate until it could obtain transmission service to Lafayette.
>
> As I wrote to the Mayor of Lafayette:[1/]
>
> This could obviously take well over a year in view of Gulf States Utilities Company firm refusal to transmit such power and lengthy proceedings may be required. This could result in an interim loss to Abbeville sufficiently large such that as a practical matter Abbeville is forced to accept the best terms it could obtain from Gulf States Utilities Company prior to May 21.

1/ The letter referred to is Attachment 9 to the February 3, 1984 transmittal.

Abbeville therefore decided that it had no choice but to execute an agreement with Gulf States. It did so notwithstanding its belief that the agreement with Lafayette would have been in its best interest.

In conclusion, Abbeville believed that it was in Abbeville's best interest to obtain its electric supply from Lafayette. Gulf States refused to provide the transmission and interconnection agreements it had promised would be available for our purchase from another system, and refused to hold its own offer open so that we might continue to pursue alternatives.

B. St. Martinville

St. Martinville, like Abbeville, owns and operates a small municipal distribution system that has long purchased its power as a GSU requirements customer. In the recent past, St. Martinville, like Abbeville, has realized it can obtain substantial savings if it purchases its requirements from Lafayette. Towards this end, in 1983 Lafayette and St. Martinville negotiated a requirements contract similar to that Lafayette entered into with Abbeville. In light of GSU's indication that transmission would be available to LEPA members, St. Martinville took necessary action and joined LEPA. Nonetheless, at the last moment, in the spring of 1984, GSU presented St. Martinville with new hoops to jump through in order to obtain transmission. At the same time, GSU offered St. Martinville the alternative of renewing with GSU immediately in exchange for a retroactive rate reduction and bonus refund. St. Martinville, like Abbeville, had little practical alternative but to take GSU's offer. It entered into a one-year contract extension with GSU in hope that transmission to Lafayette can be obtained in the interim. To date, however, GSU has not provided transmission.

1. St. Martinville Negotiated an Agreement with Lafayette and Joined LEPA to Obtain Transmission

By letter of April 5, 1983, the Mayor of St. Martinville formally expressed interest in purchasing electricity from Lafayette. 1/ "We would," Mayor Earl H. Willis wrote to Lafayette, "like you to discuss this matter with the City of

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1/ Attachment 10 to the February 3, 1984 transmittal.

Lafayette and Gulf States Utilities (for use of their transmission lines) and then give us a proposal for consideration." By letter of April 6, 1983 to GSU, Lafayette requested GSU to make transmission service available. 1/

As Lafayette wrote to St. Martinville on May 5, 1983, 2/ "GSU's response did not say 'yes' or 'no' but indicated a lack of desire by GSU to transmit the power under that [Lafayette/GSU interconnection] Agreement. Depending on the outcome of a meeting on a very similar matter between Abbeville and GSU, Lafayette will vigorously pursue the necessary transmission ..."

Notwithstanding GSU's action, as discussed above, to block Lafayette's Abbeville sale, Lafayette and St. Martinville pursued an agreement. Where GSU had suggested to Abbeville that transmisssion might be available if Abbeville joined LEPA, St. Martinville did so.

2. At the Last Moment GSU Imposed New Obstacles to the St. Martinville-Lafayette Transaction

In April, 1984 the proposed Lafayette-St. Martinville agreement was brought before the St. Martinville City Council. It was presented along with a report by St. Martinville's engineering consultants which showed millions of dollars in savings to St. Martinville if it took service from Lafayette (see March 26, 1984 letter, Attachment F).

With St. Martinville on the verge of initiating service from Lafayette, GSU explained, for the first time, that membership in LEPA was hardly all that was required in order for GSU to provide transmission. In addition, St. Martinville would be required to enter into a separate interconnection agreement with GSU. Moreover, GSU said it would not provide transmsision service between Lafayette and St. Martinville at 13 Kv. Finally, GSU stated that St. Martinville would be required to provide for transformation from 69 Kv to 13 Kv.

The additional interconnection agreement would be required even though St. Martinville is a member of LEPA, which has an interconnection agreement with Gulf States, under which transmission is provided for. Gulf States indicated that

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1/ Attachment 11 to the February 3, 1984 transmittal.

2/ Attachment 13.

transmission at 13 Kv would not be available even though GSU's FERC transmsision tariff provides a rate for delivery at 13 Kv. Finally, Gulf States indicated that St. Martinville would be required to provide its own transformation equipment even though such equipment is currently in place and is being used by Gulf States in its service to St. Martinville.

3. While Imposing new Obstacles to Purchase From Lafayette GSU Offered St. Martinville a Bonus for Immediate Contract Renewal

While imposing previously unannounced and, in Lafayette's view, baseless further requirements for transmission from Lafayette, GSU simultaneously offered to retroactively upgrade its own service to St. Martinville to the lower priced "WST" (wholesale transmission) rate if St. Martinville renewed its contract with GSU.

4. Given the New Obstacles Imposed by GSU, St. Martinville had no Practical Recourse to Contract Renewal With GSU

St. Martinville, like Abbeville one year earlier, had no practical alternative 1/ to acceptance of GSU's "one-time only" discount offer. The City Council therefore approved an extension of the GSU contract, at the WST rate, through March 14, 1985. In view of these developments, Lafayette agreed to hold its own offer to St. Martinville open, with service to begin upon expiration of the GSU contract. Lafayette's offer, of course, is contingent upon transmission from GSU; GSU has yet to provide transmission rates and terms.

II. GSU Has Refused To Provide Transmission Between Lafayette And Plaquemine Under Its Longstanding Interconnection Agreement With These Entities.

While GSU has, to date, failed to provide transmission between Lafayette and non-generating systems, it has also refused to provide transmission for Lafayette to Placquemine, a generating system, under the interconnection agreements entered into in 1974. This refusal to meet transmission obligations under the interconnection agreements is a violation of GSU's obligations under the construction permit, which was entered into in tandem

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1/ That is, no alternative short of costly and time-consuming litigation, and related uncertainty.

with the interconnection agreements. Insofar as GSU would require the use of LEPA for the Lafayette/Plaquemine transaction, GSU would force Lafayette and Plaquemine into penalties and anti-competitive restrictions that were not provided for by the long-standing interconnection agreements. This use of LEPA, which was not in existence at the time of initial antitrust review, in this manner, itself constitutes a "significant change" requiring remedy.

A. GSU Refused to Transmit between Lafayette and Plaquemine under its Longstanding Interconnection Agreements with Them

Plaquemine, like Lafayette, is a municipal electric system with its own generation. In 1974, Plaquemine and Lafayette entered into essentially identical interconnection agreements with GSU. These agreements were recognized by GSU as part and parcel of commitments undertaken in consideration of the grant to GSU of its River Bend construction permit. 1/

In 1983, Plaquemine, then a GSU customer, entered into a contract with Lafayette for wholesale service. The contract expressly provided that Plaquemine would coordinate its own generation with Lafayette. As soon as agreement was reached, Plaquemine and Lafayette asked GSU to provide transmission under the transmission schedules contained in their longstanding interconnection agreements. Both the Lafayette and Plaquemine interconnection agreements with GSU provide for the use of the GSU transmission system for the transmission of "wholesale power and energy." 2/ By letter of April 27, 1983, 3/ Lafayette

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1/ See attached March 20, 1974 letter from Norman R. Lee, President of GSU to Joseph J. Saunders, Chief, Public Counsel and Legislative Section, U.S. Department of Justice.

2/ As Schedule "LTS," the transmission schedule of the Plaquemine and Lafayette interconnection agreements with Gulf States, provides, in the statement of "Purpose" (Section 1):

> 1. The purpose of this Service Schedule LTS is to provide for transmission services and compensation therefor in the case where it is necessary to use the transmission facilities

(FOOTNOTE CONTINUED ON FOLLOWING PAGE)

3/ Attachment 17 to the February 3, 1984 letter.

requested Gulf States to provide transmission service under Schedule LTS, the transmission schedule contained in GSU's interconnection agreements with Plaquemine and Lafayette. Gulf States, however, refused to provide the requested transmission.

Initially, GSU advanced a number of narrow technical excuses for not providing the service requested. When Lafayette fully responded to these claims, 1/ however, GSU dug in its heels and insisted that it would not provide the service under Schedule LTS, 2/ notwithstanding Lafayette's protests that LTS service was in order. 3/ As GSU's October, 1983 response here would put it:

> ... Transmission for full requirements service as requested and scheduled by Lafayette did not meet the terms of such schedule. The type of scheduling of service requested is not provided to other entities under similar schedules. To provide the requested service would have been preferential treatment at a preferential rate. 4/

B. GSU's Refusal to Transmit Under the Interconnection Agreements Violates these Agreements and the Construction Permit Here

There is nothing in the GSU/Lafayette/Plaquemine interconnection agreements that precludes the service sought by

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(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

> of Gulf States to deliver or receive wholesale power and energy to or from the system of Lafayette (Plaquemine) and another entity (as defined in Section 5) for coordinating generation, and to establish the terms, conditions, and standards applicable thereto. (emphasis added)

The Plaquemine/Lafayette agreement entered into in 1983 is for wholesale power and energy, and provides for coordination of Lafayette and Plaquemine's generation.

1/ See Attachment 18 to the February 3, 1984 letter.

2/ Attachment 19 to the February 3, 1984 letter.

3/ Attachment 20 to the February 3, 1984 letter.

4/ Response B.1.h.4.

Lafayette and Plaquemine. 1/ While GSU would state that similar service is not provided to other entities under these schedules, GSU cites no instance in which similar service was sought and a contrary construction of the language provided.

As stated above, 2/ the GSU interconnection agreements were entered into in tandem with the construction permit here. GSU's refusal to transmit in accordance with its interconnection commitment is a violation of the permit conditions as well.

C. GSU's Use of LEPA to Evade Transmission Commitments Contitutes a "Significant Change"

In the event, faced with GSU's refusal to provide service under the interconnection agreements, Lafayette and Plaquemine had no immediate recourse but to enter into agreements to provide service under the LEPA transmission schedule. 3/

As discussed below, service through LEPA, however, is not equivalent to service under the longstanding interconnection agreements. First, it is not transmission service, but requires a sale of Lafayette power to LEPA and a resale to Plaquemine. Second, the LEPA agreement contains an onerous penalty provision, a severe restriction on resale, and imposes further costs that are not called for by the earlier interconnection agreements.

LEPA, and the related interconnection requirements, did not, of course, exist at the time of the initial antitrust review here. At that time GSU's transmission obligation to Lafayette (and Plaquemine) were spelled out in the construction permit and contemporaneous interconnection agreement. Neither the agreement nor the permit provided for, much less permitted, the costs and

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1/ See footnote 2, page 11, and Attachment 20 to the February 3, 1984 letter. As quoted in footnote 2, "LTS" provides for transmission of "wholesale power and energy ... for coordinating generation." The Lafayette/ Plaquemine agreement provides wholesale power and provides for coordination with Plaquemine's generation. In addition, Lafayette notes that the "term" provision of LTS (4.1) is consistent with the term of the 1983 Lafayette/Plaquemine agreement.

2/ See also March 20, 1984 letter attached hereto.

3/ Attachment 20 to the February 3, 1984 letter.

restrictions GSU insists upon in requiring arrangements with LEPA. GSU has not justified, and cannot justify, these new requirements as consistent with the construction permit policy. GSU's insistence on use of LEPA is, in its own right, a "significant change" requiring remedy.

III. LEPA Is Not An Adequate Fulfillment Of GSU's Transmission Obligation

As Lafayette understands it, GSU would rationalize its recent refusals to transmit for Lafayette by stating that transmission is available through LEPA. As a practical matter, the promise of service to these systems through LEPA is "pie in the sky." To date, there is no instance in which GSU has provided transmission for Lafayette service to a non-generating municipal utility on the GSU system. As stated by Abbeville Mayor Campisi, GSU has made it plain that it simply does not want to provide transmission from Lafayette to non-generating utilities currently served by GSU. 1/ Where, in the case of St. Martinville, requests for such service emerge, GSU has created new and previously unannounced conditions that must be m

In the event, where, as in the case of Plaquemine, service through LEPA is an alternative, it is not, as a matter of fact or law, a satisfactory alternative for GSU's NRC permit commitment to furnish transmission service to Lafayette. For example:

1. The LEPA Alternative is not Even a Transmission Service Alternative

Under the ongoing Lafayette/Plaquemine arrangement, LEPA takes title to the power to be transmitted. 2/ Thus, service through LEPA as a matter of law, is not transmission service, and cannot fulfill construction permit commitments to transmit.

1/ Mayor Campisi's affidavit is Attachment 3 to Lafayette's February, 1984 transmittal. See pages 6-7.

2/ See Section 4545.36 of the statute, which was provided by Lafayette as Attachment B to the March 26, 1984 transmittal. That section provides, in part,

> After the effective date of this Act, no municipality that has executed a contract with the authority for the purchase of capacity shall commence service at retail to any

(FOOTNOTE CONTINUED ON FOLLOWING PAGE)

2. The LEPA Alternative Provides for Severe Restriction on Resale

The Louisiana statute authorizing LEPA provides limitation on the alienation of power which passes through LEPA. 1/ GSU's connection with the construction permit conditions here, contains no such restriction. By requiring Lafayette to proceed through LEPA rather than its own interconnection agreement, GSU seeks to place restriction on the alienation of Lafayette's power. This restriction sharply differentiates the LEPA agreement alternative from Lafayette's interconnection agreement rights, and again, demonstrates that the LEPA agreement is not the equivalent of the transmission commitments agreed to by GSU in connection with the Commission permit here.

3. The LEPA Agreement is Otherwise Substantially More Onerous and Unreasonable than the Lafayette-GSU Interconnection Agreement

Thus, the LEPA agreement contains a penalty provision which, according to Gulf States, would require Lafayette (or its buyer) to pay a 100 percent 12-month ratchet for inadvertent deliveries. As detailed in Lafayette's February 3, 1984 transmittal, GSU has been employing this provision to impose thousands of dollars in baseless overcharges for transmission between Lafayette and New

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(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

> customer situated outside the corporate limits of such municipality except where said customer is situated within 300 feet of municipally owned and operated facilities outside said municipality which facilitatie: were in operation on April 1, 1979, except with the consent in writing of any other electric public utility serving customers in its general area; provided further that if no electric service is available outside of the 300 foot area, then such consent shall not be unreasonably withheld.

1/ Similarly, the negotiated arrangement for sale between Lafayette and St. Martinville includes a purchase and resale by LEPA. As discussed above, this arrangement has been frustrated by GSU.

Roads. 1/ GSU's behavior in the New Roads case shows its clear intent to use this provision to deter transactions between municipal systems.

In addition, the LEPA transmission schedule being used for the 1983 Lafayette/Plaquemine transaction requires a minimum service term of 12 months; while Schedule LTS (of the GSU-Lafayette Agreement) permits a 5-month term. Thus, Gulf States' insistence on the LEPA schedule limits Lafayette and Plaquemine's ability to adjust demands (and charges) to meet seasonal load variations.

4. The Requirement that Municipals Take Service through LEPA Imposes Additional Time and Administrative Costs on Municipals.

In order to gain membership in LEPA, municipalities must conduct a referendum which is time consuming, and, of course, provides GSU the opportunity to interfere in the local political process. Where transmsision does take place through LEPA, the involvement of another entity by definition increases transaction costs.

In sum, even where GSU would actually provide service through LEPA, this service is not equivalent to that to which GSU is otherwise obligated to provide. In addition, as discussed above, to the extent that GSU would now limit construction permit transmission commitments by requiring use of LEPA, its behavior represents a "significant change" requiring attention and remedy.

1/ The provision at issue in that case is contained in the New Roads-GSU interconnection agreement. The New Roads agreement, entered into in 1983, tracks the LEPA agreement, not the Lafayette-GSU agreement. As Lafayette's February 3 letter explains, even while transmission between New Roads and Lafayette is being provided under the Lafayette/GSU interconnection agreement GSU has invoked the New Roads interconnection agreement in making claims to thousands of dollars in penalty charges.

IV. There Can Be No Doubt Of GSU's Intent To Deny Lafayette Transmission Access In Order To Prevent Lower Cost Sellers From Competing.

As the above facts show, GSU has not provided transmission service from Lafayette to to non-generators and refused to honor its longstanding commitment to provide transmission service between Lafayette and Plaquemine, both generating systems. Moreover, while promising "pie in the sky" through LEPA in support of its claim that it has not completely refused service for non-generators, it imposes new obstacles whenever the potential for such service nears.

GSU's intent to deny transmission could hardly be clearer. Even so, GSU has publicly affirmed that it intends to deny transmission service to Lafayette and others because it knows they can provide service at lower rates than GSU. As GSU has recently put it in its 1983 10-K report to the Securities and Exchange Commission:

> The higher costs of generation of the Company that will result from the termination of the Exxon fuel contract in January, 1985, (which based upon current assumptions of fuel prices, which are subject to change, could increase costs in the range of 30% for the average residential customers), and the expected increase in electric rates following the presently scheduled completion of the River Bend nuclear unit at the end of 1985 will adversely affect the Company's ability to meet price competition. Municipalities and large industries inside and outside the Company's service area that have surplus generation available for periods of time may offer such electricity for sale within the Company's service area at costs significantly lower than the Company's anticipated regulate rates. The Company and other systems in the region offer certain transmission services which facilitate sales of such electricity. Existing wholesale and retail load of the Company is subject to possible displacement. The Company has recently initiated litigation to determine whether it has a duty to provide transmission service so that another wholesaler (a municipality) can sell power to a large

industrial customer of the Company. See "Item 3. Legal Proceedings." 1/

Conclusion

GSU has refused to transmit on behalf of sales from Lafayette to non-generating systems, and to this date, has not provided transmission. It has claimed that transmission will be available through LEPA, but when this claim is measured against GSU's behavior and stated intent to deny transmission, it is a will-o'-the-wisp. While denying transmission altogether for sales to non-generating systems, GSU has refused to honor its contractual obligation, as contained in an interconnection provision negotiated in connection with the construction permit here, to provide transmission between Lafayette and Plaquemine. Finally, even if transmission were generally available through LEPA, as GSU might claim, that alternative is legally and factually inferior and unsatisfactory.

Based on the above facts, 2/ Lafayette again requests (a) a finding that "significant changes" have occurred subsequent to the previous antitrust review conducted by the Attorney General at the construction permit stage and that a second antitrust

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1/ Gulf States' Form 10-K, report to the U.S. Securities and Exchange Commission for fiscal year ended December 31, 1983 at 17-18.

The litigation referred to in the quotation is that in which GSU seeks a declaratory order that it need not transmit on behalf of a sale by Lafayette. The GSU complaint in that case has been provided as Attachment E to Lafayette's March 26, 1984 transmittal.

2/ And others shown in Lafayette's prior transmittals. Thus, for example, in 1982-83, GSU refused to provide Lafayette with through transmission to Mississippi Power & Light ("MP&L") on behalf of a sale to municipal systems in Mississippi. See Lafayette's February 3, 1984 letter at 18-19.

review is now required at the operating license stage, and (b) a finding, pursuant to Section 2.206 of the Commission's regulations, that GSU has violated conditions of its construction permit, and the provision of appropriate remedies.

Very truly yours,

Robert A. Jabson

Daniel I. Davidson

Daniel Guttman

Attorneys for the City of
Lafayette, Louisiana

Attachment

cc: Cecil Johnson, Esq.

GULF STATES UTILITIES COMPANY
POST OFFICE BOX 2951 • BEAUMONT, TEXAS 77704
AREA CODE 713 835-6631

March 20, 1974

Mr. Joseph J. Saunders, Chief,
Public Counsel and Legislative
Section
United States Department of Justice
Washington, D. C. 20530

Re: Gulf States Utilities Company, River Bend Nuclear Power Plant, Units 1 and 2; Application for License to Construct Nuclear Utilization Facilities; AEC Dockets Nos. 50-458 and 50-459

Dear Mr. Saunders:

We appreciate the opportunity to discuss various matters involved in the review by your section of the Department of Justice relating to the pending license application of this Company (Applicant) before the Atomic Energy Commission for the construction of nuclear utilization facilities, as referenced above.

We understand that your review of this application has raised certain questions under the antitrust laws relating to the bulk power supply policies of the Applicant. While it is the position of Applicant that its activities, and in particular its bulk power supply policies, should not concern any such questions, the Applicant submits this letter setting forth certain statements regarding such policies.

In order to obviate the possibility of a hearing on possible antitrust issues in the above-referenced proceeding, the Applicant sets forth in the appendix to this letter policies which it will maintain during the period of this license, subject to the understandings stated herein. It is understood that this statement of policy satisfies the Department's antitrust questions and will enable the Department to render a no hearing antitrust advice letter. In the event the Atomic Energy Commission in any event should institute a hearing on

antitrust issues or attempt to impose different, inconsistent or additional conditions, Applicant does not intend by this letter or the statement of policies attached to waive, and instead hereby reserves all of its rights under law to appear in such proceeding and contest the imposition of different, inconsistent or additional conditions.

During our discussions with you about participation in the subject nuclear units, we advised you that we have not constructed and have not planned to construct any jointly-owned electric generating plants on our system, and we have not and have not planned to sell unit power from any present or future electric generating units. While Applicant appreciates that financial and business conditions in the future may require it to change such policies and for such reason reserves the right to do so, Applicant understands that the proposed license conditions relating to participation apply only to nuclear units in Louisiana.

Applicant intends to file later this year an application for a construction permit for certain nuclear units to be located in Texas which are to be known as Blue Hills Units Nos. 1 and 2. Applicant will enter into similar policy commitments concerning such specific units; provided that as to other nuclear generating units which Applicant may construct, own and operate in Texas, the power from which is intended for use in Applicant's general system operation, Applicant will merely confirm to you by letter its intention, under conditions then existing and in accordance with applicable law, to allow participation in such other units on conditions similar to those afforded under Policy Commitment 8.

We have now filed with the Federal Power Commission copies of the power interconnection agreements entered into by Applicant with Cajun Electric Power Cooperative, Inc. and with the Cities of Lafayette and Plaquemine, Louisiana. Such agreements contain terms and provisions for bulk supply coordination and transmission service. Such agreements with Cajun and the Cities were offered and negotiated by Applicant in pursuit of the policy commitments attached, and it is Applicant's understanding that such agreements (as subject to regulatory action and change by actions of the parties) comply with such commitments.

Nothing in this letter shall be construed to be a waiver by the Applicant of its rights to appear and express its position on behalf of or in opposition to any specific proposals relating to bulk power supply before any legislative, administrative, judicial, or other body.

The Applicant would not object to an inclusion of this letter in, and the statements and policies expressed herein being made conditions to the license applied for before the

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U. S. Atomic Energy Commission, as referenced above, specifically related to the River Bend Nuclear Power Station Plant Units for which the subject application is pending.

The commitments made are subject to the following understandings:

(1) Applicant does not intend by these commitments to become a common carrier.

(2) Applicant reserves all rights and protection afforded it by law with respect to retail distribution of electricity in those areas in which it holds franchises to conduct its business.

(3) That any license conditions imposed by the Atomic Energy Commission upon Applicant based in whole or in part upon these commitments shall be subject to continuing jurisdiction; and that Applicant shall have the right to seek relief from or modification of such conditions by appropriate legal recourse through the Atomic Energy Commission, its successor agencies, or through any other administrative, legislative, or judicial authority having jurisdiction.

(4) That none of these commitments shall require Applicant to enter into any binding arrangements with another party until the financial responsibility of such party is evident or reasonably assured nor prior to resolution of any substantial questions as to the lawful authority of such party to engage in the transaction.

(5) All of the understandings and commitments of the Applicant are contained in the commitments herein made and this cover letter.

(6) None of the commitments herein made shall be construed as a waiver by Applicant of its rights to contest whether or not a future factual situation is inconsistent with the commitments herein made or to contest by appropriate legal proceedings the validity of any regulation, order, or requirement imposed upon Applicant by any governmental or regulatory authority, including but not limited to the Atomic Energy Commission and the Federal Power Commission, or their successor agencies.

(7) Enforcement of any of the commitments shall only be through appropriate proceedings before the Atomic Energy Commission.

Very truly yours,

Norman R. Lee

Norman R. Lee
President, Gulf States Utilities Company

Attachments